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No. 159

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, APPELLANT,

v.

ERNEST KING BRAMBLETT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

This memorandum is submitted pursuant to the request of the Court made in the course of oral argument on February 7, 1955.

1. The indictment herein was drawn, the case was tried, the jury charged, and the verdict of guilty found on the theory that defendant had violated the false-statements statute, 18 U.S.C. 1001, in that he had submitted to the House Disbursing Office a clerk-hire form falsely designating one Margaret Swanson as his clerk, when he knew that she was not his clerk, and that he had wilfully continued the false designation in full force and effect

during the period covered by the indictment for the purpose of converting to his own use the compensation authorized for such clerk. For reasons we have stated to the Court in our briefs and on oral argument, we believe that the false-statements statute plainly embraces the false statements made by appellee to the House Disbursing Office, an agency of the United States. If we are correct in this construction of the false-statements statute, the judgment below should be reversed, and the Court need go no further.

On oral argument, counsel were invited to submit memoranda on the question whether, despite the fact that the case had been tried on the assumption that the false-statements statute was applicable, the conviction could be sustained on the ground that the indictment charged and the proof established a violation of the false-claims statute, 18 U. S. C. 287. A decision for the Government on this latter ground, without more, might lead to further proceedings on remand, involving additional litigation and attendant delays. To avoid such a result, we respectfully suggest that, unless this Court should first determine that 18 U. S. C. 1001 fails to protect legislative agencies, including the House Disbursing Office, from wilful false statements, it should not pass upon the applicability of the false-claims statute.

2. The false-claims statute, 18 U. S. C. 287, reads as follows:

> Whoever makes or presents to any person or officer in the civil, military, or naval service

> of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

In relevant part, the elements of the crime of making a false claim thus consist of:

> (a) Presenting to any person in the civil service of the United States;
>
> (b) Any claim upon or against the United States;
>
> (c) Knowing such claim to be false.

We believe that the indictment before the Court in this case charges facts which make out an offense under the false-claims statute.[1] Thus the indictment (R. 1-4) charges that:

> (a) Appellee presented a clerk-hire allowance form to the House Disbursing Office;
>
> (b) The designation was made in order to convert to his own use the compensation authorized for Margaret Swanson, being at the rate of $4700 per annum;
>
> (c) The designation was made knowingly to falsify a material fact, that is, to represent

[1] Under 18 U.S.C. 2, whoever aids and abets the commission of a crime or wilfully causes an act to be done, which if performed by him would be an offense against the United States, is punishable as a principal.

> that Margaret Swanson was his clerk and entitled to receive compensation, and the false designation was knowingly continued in full force and effect throughout the designated pay periods.[2]

It is thus apparent that the facts charged in the indictment establish each of the elements of an offense under the false-claims statute. Moreover, since it was necessary for the Government to prove each of these facts in order to make out a violation of the false-statements statute, it is apparent that the problems of proof and evidence confronting the defendant were in all respects identical to those which would have confronted the defendant had the Government explicitly been proceeding under the false-claims statute.

Examination of the trial court's charge to the jury in this case confirms this conclusion. Thus the Court charged that, in order to return a verdict of guilty, the jury must find as a fact, beyond a reasonable doubt, from all the evidence (Tr. 702, App. ~~41~~ 57):[3]

> "(1) that the defendant presented the clerk-hire form dated August 27, 1949, to the

[2] Wilful failure to withdraw the false clerk-hire designation in continuation of his purpose to convert to his own use the compensation authorized for Mrs. Swanson during each succeeding pay period is the legal equivalent of wilfully making a false claim in each such succeeding pay period. *United States* v. *Giles*, 300 U.S. 41.

[3] For the convenience of the Court, the charge of the trial court (omitting the general paragraphs) is set forth in full in the appendix hereto.

Disbursing Office of the House of Representatives, and

"(2) that, on June 30, 1950, he knowingly and wilfully permitted to continue in full force and effect the representation made therein that Margaret M. Swanson was, during June, 1950, a clerk to him in the discharge of his official and representative duties and entitled to receive compensation, and

"(3) that during that month defendant knew that she did not perform any such official and representative duties."

It will be noted that the trial court's instructions to the jury required it, in order to return a verdict of guilty, to find as a fact each of the elements required to establish violation of the false-claims statute.

The decisions of this Court make it clear that, in the circumstances of this case, the judgment of conviction can be sustained on the ground that the indictment charges and the proof establishes a violation of the false-claims statute, 18 U.S.C. 287, even though that statute was not specifically cited in the indictment, and notwithstanding the fact that the indictment was patently framed with 18 U. S. C. 1001 in mind.

In *Williams* v. *United States*, 168 U. S. 382, for for example, the indictment bore an endorsement that it had been brought under a section of the Revised Statutes which made it unlawful for every officer "appointed and acting under the authority

of any revenue law of the United States" to extort money under color of law (*id.* 386-387). Defendant, who was a Chinese inspector charged with extorting money from a person of Chinese descent seeking entry into the United States, demurred to the indictment. The trial court overruled the demurrer. On appeal, this Court held that since Chinese inspectors had no connection with the revenue system, the prosecution could not be sustained under the cited statute. But this Court viewed the question presented as being "whether these prosecutions are authorized by *any* existing statute of the United States" (*id.* 385) (emphasis added), and sustained the indictment on the ground that the facts alleged made out a violation of another statute applicable to "Every officer of the United States who is guilty of extortion under color of his office" (*id.* 388). In this connection the Court said (*id.* 389):

> It is wholly immaterial what statute was in the mind of the District Attorney when he drew the indictment, if the charges made are embraced by some statute in force . . . We must look to the indictment itself, and if it properly charges an offence under the laws of the United States, that is sufficient to sustain it, although the representative of the United States may have supposed that the offence charged was covered by a different statute.

Accord: *United States* v. *Nixon*, 235 U. S. 231; *Hammer* v. *United States*, 271 U. S. 620, 625; cf.

Prussian v. *United States*, 282 U. S. 675. See, further, Mr. Justice Frankfurter, dissenting in *Rosenberg* v. *United States*, 346 U. S. 273, 306.

The decisions of this Court which might be regarded as suggesting a contrary rule are distinguishable.

In *United States* v. *Stafoff*, 260 U. S. 477, this Court considered whether a prosecution based on an indictment which had been founded under certain revenue statutes which the Court held had been (as of the date in question) repealed by the National Prohibition Act, should be remanded for judgment and sentence under that Act inasmuch as facts could be spelled out that might fall within that Act. In holding that such a disposition of the case would be unjust, the Court stressed that the National Prohibition Act was "a law of fundamentally different policy" from the statutes under which the prosecutions were brought (*id.* 481). In the instant case, the two statutes involved, as applied to monetary frauds, are founded on precisely the same policy and directed at the same evil (see Govt. Main Br. 17-25).

Cole v. *Arkansas*, 333 U.S. 196, involved a very different factual situation from that involved in the instant case. There the defendant was charged under a statute which made it an offense (*id.* 198):

> . . . [a] for any person acting in concert with one or more other persons, to assemble at or near any place where a "labor dispute" exists and by force or violence prevent . . . any person from engaging in any lawful voca-

> tion, or [b] for any person acting . . . in concert with one or more other persons, to promote, encourage or aid any such unlawful assemblage.

The information was framed under part b of this statute. On appeal to the Supreme Court of Arkansas following conviction, defendant raised objections to the validity of this statute under the United States Constitution. The Supreme Court of Arkansas, however, did not decide these questions, but sustained the conviction on the ground that the information had charged and the evidence had shown that petitioners had violated a different section of the Act which made it an offense (*id.* 199, n. 2):

> . . . for any person by the use of force and violence, or threat of the use of force or violence, to prevent or attempt to prevent any person from engaging in any lawful vocation . . .

This Court reversed the judgment of the Supreme Court of Arkansas on the ground that this procedure violated procedural due process in that Section 2 charged "an offense which is distinctly and substantially different from the offense charged in § 1" (id. 202).[4]

[4] The Court also noted that the judge had charged the jury that "petitioners were on trial for the offense of promoting an unlawful assemblage, not for the offense 'of using force and violence' " In the instant case, the jury was required under

In the instant case, by contrast, appellee has been indicted, tried, and convicted of an offense which is identical in all respects, on the facts charged in the indictment and found by the jury, to the offense under 18 U. S. C. 287 of presenting a false claim. The difference between the offenses defined by the two statutes, as applied to the facts of this case, is purely verbal. For the reasons we have indicated, the problem of proof and evidence confronting appellee under this indictment would be precisely the same, whether it were considered as drawn under one statute or the other. The fact that the indictment was expressly framed with the false-statements statute in mind could in no way have prejudiced his defense. Under the charge as given the jury, the jury could not have convicted appellee unless it found as a fact the elements which also constituted an offense under the false-claims statute. Accordingly, unlike *Cole* v. *Arkansas*, *supra*, it would not impair appellee's right to a fair trial and to defend himself upon the charges against him for this Court to sustain the indictment under the false-claims statute and to hold, further, that the jury's verdict of guilt, reached upon correct instructions and supported by the evidence, was adequate to sustain his conviction under that statute. *See Williams* v. *United States*, 168 U. S. at 389. However, as indicated at the outset of this memorandum, the Government

the charge in order to return a verdict of guilty to find as facts each of the elements of the offense under the false-claims statute, 18 U. S. C. 287 (see pp. 3-4, *supra*).

believes that appellee's conviction under the false-statements statute was correct in all respects and should be affirmed without consideration of the applicability to this case of the false-claims statute.

Respectfully submitted.

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FEBRUARY 11, 1955.

APPENDIX

EXCERPT FROM TRANSCRIPT FILED IN

UNITED STATES

v.

ERNEST K. BRAMBLETT

CRIM. No. 971-53 (D. C. D. C.),

February 9, 1954

[Transcript 694]

CHARGE TO THE JURY

THE COURT (Bastian, J.): [general paragraphs omitted]. [Transcript 698]

Now, what is the charge in this case and what is the statute under which the defendant stands indicted? There are, as I told you this morning, only seven counts of the indictment that you are to consider. The remaining counts have been eliminated by the Court. The fact that those counts have been eliminated is not to be taken as prejudicial either for or against the Government or for or against the defendant. And any testimony that has heretofore been introduced having to do with the counts other than those from one to seven, you are to disregard. You told me this morning by the nods of your heads that they will be disregarded. [699] the testimony with regard to them will be disregarded by you, and I trust you to do that.

Now, Count No. 1 of the indictment, which is similar to the remaining six of the seven counts, is as follows:

> "In order to accomplish the purpose of a scheme, defendant Ernest King Bramblett, on or about August 27, 1949, as a Member of Congress from the 11th District, State of California, presented to the Disbursing Office of the House of Representatives, in Washington, D. C., a clerk-hire allowance form dated August 27, 1949, in which he designated Margaret M. Swanson to be a clerk to him in the discharge of his official and representative duties to take effect beginning September 1, 1949, said clerk to receive compensation at the basic rate of $4,700.00 per annum. Defendant's purpose in the scheme was to convert to his own use the compensation authorized by this clerk-hire allowance form to be paid to Margaret M. Swanson.
>
> "Defendant Bramblett, having so presented said clerk-hire allowance form, did, on or about June 30, 1950, within the District of Columbia, in a matter within the jurisdiction of a department or agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a [700] material fact, by knowingly and wilfully continuing in full force and effect up to and including June 30, 1950, the designation contained in said document. The material

fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson during June, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation as such, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew."

Count 2 is in similar form, having to do with the employment, or alleged employment, during July 1950; Count 3, during August, 1950; Count 4, during September, 1950; Count 5 during October, 1950; Count 6, during November, 1950; and Count 7, during December, 1950.

The statute under which the defendant stands charged is what we call Section 1001 of Title 18 of the United States Code, which reads as follows:

"Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false [701] writing or document, knowing the same to contain any falsehood, fictitious or fraudulent statement or entry, should be punished as the law provides."

I instruct you that the term "wilfully" means purposefully and deliberately.

Now, the Government's instruction on this point which I granted is as follows:

"This indictment now contains seven counts or charges of violations of the same criminal statute, which is Section 1001, Title 18, United States Code. All of the counts are similar in nature. Each count charges that the defendant knowingly and wilfully falsified by his scheme a material fact contained in a clerk-hire form presented to the Disbursing Office of the House of Representatives, when he designated Margaret M. Swanson to be a clerk to defendant in the discharge of his official and representative duties and to receive a salary in a stated amount.

"The Government claims with relation to these seven counts relating to Margaret M. Swanson, that the clerk-hire form dated August 27, 1949, presented by defendant to the Disbursing Office of the House of Representatives, was never superseded or voided by defendant and that he knowingly and wilfully continued in full force and effect up to and including June 30, 1950, and for the next six paydays, the designation of Mar-
[702] garet M. Swanson as his clerk. It is provided by law that clerks to members shall be paid in accordance with the designation of the clerk-hire form unless it is changed in writing by the member before the tenth of the month.

"The indictment charges that the material fact falsified by defendant was the representation that Margaret M. Swanson, during the particular month, was a clerk to the defendant in the discharge of his official and representative duties and was entitled to receive compensation.

"I instruct you as a matter of law that such a representation of fact would be material.

"If you find, beyond a reasonable doubt, from all the evidence, (1) that the defendant presented the clerk-hire form dated August 27, 1949, to the Disbursing Office of the House of Representatives, and (2) that, on June 30, 1950, he knowingly and wilfully permitted to continue in full force and effect the representation made therein that Margaret M. Swanson was, during June, 1950, a clerk to him in the discharge of his official and representative duties and entitled to receive compensation, and (3) that during that month defendant knew that she did not perform any such official and representative duties, then
[703] your verdict would be guilty on Count 1.

"And similarly for Counts 2, 3, 4, 5, 6 and 7, which also relate to Margaret M. Swanson and which are the same as Count 1 except that each charges a succeeding month."

The defendant has asked that I charge you as follows:

> "You are instructed as a matter of law that you cannot return a verdict of guilty under any of the first seven counts of this indictment — of course there are only seven counts — unless you are convinced beyond a reasonable doubt that defendant knowingly and wilfully falsified the status of Margaret M. Swanson at the time specified in such counts. You cannot return a verdict of guilty under any of these counts, therefore, unless you are persuaded to a moral certainty both that Margaret M. Swanson was performing no services for the defendant in the discharge of his official duties during the period covered by the count in the question and that the defendant knew she was performing no such services at that time."

Now, the defendant has asked that I give you this instruction:

> "You are instructed as a matter of law that an accomplice is a person who knowingly and voluntarily cooperates with, aids, assists, advises, or encourages another in the commission of a crime.
>
> "You are instructed that the testimony of an accomplice should be received with suspicion, with the very greatest care and caution. The degree of credibility which should given [sic] such testimony is a matter exclusively

[704]

within the province of the jury, and you may accept the testimony of an accomplice. In fact, the jury has a right to convict a person on the sole uncorroborated testimony of an accomplice if the jury believes the accomplice. The accomplice in the commission of a crime is a competent witness. An accomplice is anyone who knowingly and voluntarily cooperates with, aids, assists, advises, or encourages another in the commission of a crime, regardless of his degree of participation. No matter how small the degree may be, a person who aids another in the commission of a crime is an accomplice."

Now, ladies and gentlemen, if I should have said the same thing in any of these instructions in different or varying ways, it is not to be understood that I am in any way emphasizing that particular proposition of law. You are to consider my charge as a whole and not any particular part to be extracted therefrom, and not to have any idea that I have in any way emphasized any particular instruction that I have given you.

Also, you will note that I have commented very little on the evidence. I have done that be-
[705] cause counsel have very ably done it. They have given you their views of it. You heard it all. I want to be just as careful in the trial of these cases not to give you any idea as to any feeling on the fact that I want to be sure that you will take the law as I give it to you as the law to be applied,

whether you agree with it or not, because you must take the law from me whether you agree with the law as I give it to you or not. And I am bound to take the facts as you find them, whether I agree with those or not.

Now, I want you to take this matter and consider it deliberately in the light of the instructions which I have given you, using the same ordinary common sense and ordinary intelligence which you would employ in determining any other important matter that you have occasion to decide in the course of your every-day life.

You will return a separate verdict on each of the counts, and in each instance your verdict must be either guilty or not guilty.

You also know that it is necessary that your verdict is by the unanimous vote of the twelve regular jurors.

After I have given counsel an opportunity [706] to speak with me, you will retire and you will elect a foreman or forewoman, and when you have reached a verdict make known that fact by knocking on the jury door.